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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

FIRST PRESBYTERIAN CHURCH OF ROSEVILLE
et al.,

Plaintiffs and Respondents,

v.

PRESBYTERY OF SACRAMENTO,

Defendant and Appellant;

SYNOD OF THE PACIFIC,

Intervener and Appellant.

C060451

(Super. Ct. No. SCV20758)

In this appeal of a summary judgment granted to plaintiffs in an action concerning disputes over real property between local churches and a national church (Presbyterian Church U.S.A. or PCUSA), we hold the plaintiffs' (local churches) summary judgment motions failed to establish as a matter of law that their amendment of their own articles of incorporation effectively revoked a trust created in the national church's

constitution, and the local churches fail to establish on appeal that no trust was validly created.

PCUSA's regional administrative bodies -- defendant Presbytery of Sacramento (Presbytery) and intervener Synod of the Pacific (Synod) -- appeal from summary judgment entered in favor of the local churches, plaintiffs First Presbyterian Church of Roseville (Roseville) and Fair Oaks Presbyterian Church (Fair Oaks). The trial court held that, if the local churches held their real property in trust for the national church, such trusts were revoked by the local churches' amendment of their articles of incorporation. We shall conclude reversal is compelled by (1) Corporations Code section 9142,¹ which requires that the trust be revoked in the same manner in which it was created, and (2) a California Supreme Court

¹ Undesignated statutory references are to the Corporations Code.

Section 9142, which is part of statutes governing nonprofit religious corporations (§ 9110 et seq.) allows actions to adjudicate property interests and provides in part: "(c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at common law unless one of the following applies: . . . [¶] (2) Unless, and only to the extent that, the articles or bylaws of the corporation, or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide. . . . [¶] (d) Trusts created by [subdivision (c)(2)] may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments creating the trusts."

decision (*Episcopal Church Cases* (2009) 45 Cal.4th 467) which issued after the trial court's ruling in this case.

STANDARD OF REVIEW

A motion for summary judgment should be granted if the submitted papers show that "there is no triable issue as to any material fact," and that the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c) (section 437c).) A plaintiff meets his or her burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on that cause of action. (Code Civ. Proc., § 437c, subd. (p)(1).) Once the plaintiff has met that burden, the burden shifts to the defendant to show that a triable issue of material fact exists. (*Ibid.*) "The burden of persuasion remains with the party moving for summary judgment. [Citation.] . . . We review the record and the determination of the trial court de novo. [Citation.]" (*Kahn v. East Side Union High School Dist.* (2003) 31 Cal.4th 990, 1003; see also, *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.)

In reviewing summary judgment, we (1) identify the issues raised by the pleadings, (2) determine whether the moving papers establish entitlement to a judgment as a matter of law and, if so (3) whether the opposition demonstrates the existence of a triable, material factual issue. (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 644.)

THE PLEADINGS

In March 2007, the local churches filed separate complaints against Presbytery of Sacramento (the Presbytery) for declaratory relief, quiet title, and injunctive relief. The trial court consolidated the complaints. Each local church alleged: It held real property in fee simple its own name, free of any express or implied trust; PCUSA's attempt to create a trust in its favor by amending its constitution was ineffective; and even if a trust was created, it was revoked by the local churches' amendment of their articles of incorporation. Synod filed a complaint in intervention and counterclaim for declaratory relief.

The local churches' complaints, filed in March 2007, did not allege the local churches had disaffiliated themselves from PCUSA. Rather, they asserted a dispute existed because an amended PCUSA constitution said local churches' real property is held in trust for PCUSA, while amended local church articles of incorporation revoked any such trusts. The local churches prayed for judgment (1) quieting their title to their real property, (2) declaring that the national church had no enforceable trust interest, express or implied, in the property, and (3) enjoining the national church from taking any action to enforce the invalid trusts.

Answers to the complaints are not in the record on appeal but presumably denied the allegations.

THE MOVING PAPERS

The local churches moved for summary judgment on the ground there was no defense to their actions, in that (1) the sole possible basis for finding trusts was the trust clause in PCUSA's amended constitution, but (2) the trust clause was unenforceable because a trust cannot be unilaterally created by the beneficiary, and (3) even if trusts were validly created, they were revoked by the local churches' amendments to their articles of incorporation and bylaws.

Each local church's separate statement of undisputed facts asserted that, in October 2007 (after filing the complaint), the local church voted to seek dismissal from PCUSA to join "another denomination, the Evangelical Presbyterian Church."²

The local churches presented documentary evidence of the following:

The Fair Oaks church began as an unincorporated association in 1952 and was incorporated in 1954 as a "church organized under and adhering to the doctrines and discipline of the Presbyterian Church in the United States of America" and stated in its original articles of incorporation, "That this Corporation shall be at all times subject and adhere to the doctrines and disciplines of the Presbyterian Church in the United States of America [which later became PCUSA]." Fair Oaks

² We have no need in this appeal to determine the relationship, if any, between PCUSA and the Evangelical Presbyterian Church.

acquired several parcels of real property in its own name in fee simple between 1952 and 2003.

The Roseville church was founded in 1873 and currently holds title as fee simple owner of parcels of real property on which the church building and parking lot are located, having acquired the parcels in 1961 and 2001. A barely legible copy of 1910 articles of incorporation stated a purpose to maintain worship in the Presbyterian Church in the United States of America but does not appear expressly to state adherence to the national church's disciplines.

PCUSA is governed by representative bodies called (in ascending order of responsibility) sessions, presbyteries, synods, and the General Assembly. PCUSA's constitution governs the local churches. Part of the constitution is the Book of Order (BOO), which sets forth procedural and structural rules for church governance. In 1981 (after the local churches acquired some of their property), PCUSA's predecessor organization (Presbyterian Church in the United States or PCUS) added a "trust" clause to the BOO (Chapter VIII, § G-8.0201). The trust clause states in part: "All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (USA), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or

retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)."

In 1983, PCUSA was founded upon merger of separate entities for northern and southern USA (PCUS and the United States Presbyterian Church USA) dating back to the Civil War. The trust clause remains in PCUSA's constitution.

In March and October 2006, the Roseville and Fair Oaks churches separately amended their articles of incorporation to add identical language, stating as one of the corporate purposes to acquire and own real property for religious purposes "free of any express or implied trust interest, and solely and exclusively for and on behalf of members of the corporation" Both churches' amended articles further stated that nothing contained therein shall in any way be "interpreted as conferring upon any denominational or national body or institution an express or implied trust interest in the real or personal property or other assets of the corporation. [The local church] hereby expressly revokes and disclaims any such express or implied trust interest claimed by any denominational or national body to the corporation's real or personal property or other assets." In November 2006, Roseville amended its bylaws to state, "The inclusion of the word 'presbyterian' in [its] name shall be an indicia only of the form of ecclesiastical governance to be adopted and employed by FPC

[Roseville] It is not, in and of itself, intended to establish that FPC is a member of any particular corporate, denominational or ecclesiastical body of churches which may purport to employ the presbyterian form of church governance."

The local churches also moved for summary judgment against intervenor Synod on collateral estoppel grounds.

Defendant Presbytery apparently moved for summary judgment, because the local churches in their respondent's appendix include their opposition, but the motion itself is not in the record on appeal and is not at issue in this appeal.

THE OPPOSITION

The opposing papers filed in the trial court by Presbytery and Synod (appellants) are not part of the record on appeal, because neither side included them in their appendix.

The trial court's order does not suggest any defect in the opposition papers. The absence of the opposition papers from the record does not preclude our review because, as we shall see, the local churches' moving papers failed to present a prima facie case for judgment, in that they failed in their attempt to show as a matter of law that they validly revoked any trust in favor of the national church. Thus the trial court erred in granting summary judgment on this ground. (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 161-163, 168-171 [unless moving party shows facts sufficient to establish entitlement to

summary judgment, summary judgment should be denied, even if the opposing party files no affidavits whatsoever].)

THE REPLY

The record on appeal contains the reply filed by Fair Oaks.

THE RULINGS

In June 2008, the trial court issued orders granting summary judgment in favor of the local churches on the ground that, even if a trust was created in favor of PCUSA, it was revoked by the local churches.

The trial court observed the local churches acquired property both before and after PCUSA's 1983 adoption of its constitution with the trust clause. The court questioned whether the national church could unilaterally create a trust in its favor but concluded "the court need not decide whether a trust was created in order to decide this motion," because "even if the court were to find that a trust had been created, that trust was effectively revoked" by the local churches' 2006 amendments of their articles of incorporation. The trial court did not discuss section 9142, subdivision (d) (fn. 1, *ante*), which requires that a trust revocation be accomplished in the same manner in which the trust was created.

On August 27, 2008, the trial court issued an order granting summary judgment in favor of the local churches on the Synod's complaint in intervention. The court found the issues had already been adjudicated by Presbytery, and Synod was in

privity with Presbytery. The court nevertheless went on to reiterate that, even if it were to find that a trust had been created, it was effectively revoked by the local churches in the amended and restated articles of incorporation in March and October of 2006.

On August 27, 2008, the court entered judgment in favor of the local churches on the Synod's complaint in intervention. The judgment said collateral estoppel defeated the complaint in intervention, and Synod had no enforceable trust interest, express or implied, in the local churches' real property.

On September 26, 2008, the trial court entered separate judgments in favor of Roseville and Fair Oaks, against the Presbytery. The judgments stated the local churches own their respective properties in fee simple with no express or implied trust in favor of the Presbytery.

The Presbytery and Synod appeal.

DISCUSSION

Appellants contend the judgment must be reversed because the trust clause in the national church's constitution is valid and (pursuant to section 9142, fn. 1, *ante*) could be revoked only by amendment of that constitution, which did not occur, and the local churches' attempts to revoke the trust in violation of section 9142 were ineffective.

We decline to determine on this record whether the trust clause in the constitution is valid. The trial court did not

rule on this point. Assuming for the sake of argument the trust clause was valid, as urged by appellants, reversal would be required because the trial court erred in concluding -- in contravention of section 9142 -- that a trust created in a national church's constitution could be revoked in local churches' articles of incorporation. Thus, the local churches' amended articles of incorporation were ineffective to void any trust. This means the local churches failed to meet their burden to establish entitlement to summary judgment, and the judgments must be reversed. (*Teselle v. McLoughlin, supra*, 173 Cal.App.4th at pp. 161-163, 168-171 [defects in opposition immaterial if moving papers fail to make out prima facie case].) Although the local churches urge us to affirm the judgments on the alternative ground that the trust clause in the national church's constitution was *invalid*, we decline to do so in this case, where we have not been presented with a complete record of the papers filed in the trial court.

Section 9142, subdivision (c) (fn. 1, *ante*), allows a trust to be created in "the governing instruments of a superior religious body or general church of which [a local church] is a member" and specifies in subdivision (d) that such a trust could be revoked only by amendment of the instrument which created the trust. "[S]ubdivision (d) appears clearly to indicate that, under California law, a trust is created by compliance with any one of the alternatives set forth in subdivision (c)(2)

[articles, bylaws, or higher church's governing instruments], and it can only be altered or dissolved by amending the creating instrument." (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 489, italics omitted.)

Thus, the trust clause in PCUSA's constitution could be revoked only by amendment of PCUSA's constitution. No such amendment took place in the constitution and therefore there was no valid revocation. Accordingly, the local churches were not entitled to summary judgment.

Our conclusion is reinforced by a California Supreme Court case decided in January 2009, after the trial court entered judgment in this case (September 2008). Thus, *Episcopal Church Cases, supra*, 45 Cal.4th 467, held that on the record before the Supreme Court, under the governing documents of a local church and a general church, church property held by a local church reverted to the general church upon disaffiliation of the local church. *Episcopal Church Cases, supra*, 45 Cal.4th at pages 473 and 485, explained that, while the First Amendment, as applied to the states through the Fourteenth Amendment, restricts state courts from deciding questions of religious doctrine, courts should resolve church property disputes to the extent they can do so without reference to religious doctrine, using the "neutral principles of law" approach of *Jones v. Wolf* (1979) 443 U.S. 595, 597 [61 L.Ed.2d 775]. There are neutral principles of law, developed for use in all property disputes, which can be

applied without “establishing” churches to which property is awarded. (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 480-481.) “Neutral principles” may include application of statutes specifically governing religious property, even though such statutes obviously do not apply to all property disputes. (*Id.* at p. 481, fn. 4.) A civil court must take care to examine religious documents in secular terms and not to rely on religious precepts in determining whether the documents indicate the parties intended to create a trust. (*Id.* at p. 483.)

The California Supreme Court “conclude[d] that secular courts called on to resolve church property disputes should proceed as follows: State courts must not decide questions of religious doctrine; those are for the church to resolve. Accordingly, if resolution of a property dispute involves a point of doctrine, the court must defer to the position of the highest ecclesiastical authority that has decided the point. But to the extent the court can resolve a property dispute without reference to church doctrine, it should apply neutral principles of law. The court should consider sources such as the deeds to the property in dispute, the local church’s articles of incorporation, the general church’s constitution, canons, and rules, and relevant statutes, including statutes specifically concerning religious property, such as . . . section 9142. [Citations.]” (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 485.)

"At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties, provided it is embodied in some legally cognizable form. [Citation.]" (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 487, italics omitted.)

In *Episcopal Church Cases*, the general church -- in apparent reaction to the 1979 *Jones v. Wolf* case (443 U.S. 595) -- added a Canon reciting an express trust in favor of the denominational church. (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 487.) The addition occurred about 25 years before the dispute erupted. The local church argued in court that, in order for the canon to be effective, it had to have been enacted by some kind of agreement showing the express consent of the local church (and presumably every local parish in the country). (*Ibid.*) The Supreme Court rejected the argument. "Requiring a particular method to change a church's constitution -- such as requiring every parish in the country to ratify the change -- would infringe on the free exercise rights of religious

associations to govern themselves as they see fit. It would impose a major, not a 'minimal,' burden on the church governance." (*Ibid.*) Moreover, prior canon provisions gave the higher church substantial authority over parish property (e.g., a local church could not alienate property without the higher court's consent), and thus the new canon merely codified what had long been implicit. (*Id.* at p. 488.) Additionally, section 9142 permits the governing instruments of a general church to create an express trust in church property, which the new canon did. (*Ibid.*)

In *Episcopal Church Cases*, *supra*, 45 Cal.4th 467, the local church "agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments. Those instruments make clear that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church. Respect for the First Amendment free exercise rights of persons to enter into a religious association of their choice . . . requires civil courts to give effect to the provisions and agreements of that religious association." (*Id.* at p. 489.)

In our case, the trial court relied on *California-Nevada Annual Conference of the United Methodist Church v. St. Luke's United Methodist Church* (2004) 121 Cal.App.4th 754 (*St. Luke's*), which held (1) section 9142, subdivision (c)(2), does not

authorize a general church to create a trust interest for itself in property owned by a local church simply by issuing a rule declaring that such a trust exists, and (2) a local church's creation of a trust interest in favor of the general church, including a trust interest created by the local church's agreement to a general church's rule calling for the local church to hold property in trust for the general church, may be revoked by the local church unless the local church has expressly declared that trust to be irrevocable. (*St. Luke's*, *supra*, 121 Cal.App.4th at p. 757.)

However, the California Supreme Court disapproved the *St. Luke's* case, in part, stating in the *Episcopal Church Cases*, *supra*, 45 Cal.4th 467: "The *St. Luke's* court . . . stated that 'subdivision (c)(2) of . . . section 9142 does not authorize a general church to create a trust interest for itself in property owned by a local church simply by issuing a rule declaring that such a trust exists' [Citation.] As a general proposition, this statement is inconsistent with section 9142, subdivision (c)(2)'s plain language, and we disapprove it. Instead, we agree with the assessment of the Court of Appeal in this case: '[I]n a hierarchically organized church, the "general church" can impress a trust on a local religious corporation of which the local corporation is a "member" if the governing instruments of that superior religious body so

provide.'" (*Episcopal Church Cases, supra*, 45 Cal.4th at pp. 491-492.)

Episcopal Church Cases also said: "The court in [*St. Luke's*] concluded that there had been a trust in favor of the general church, but that the deeds to the local property and the local church's articles of incorporation, not the general church's governing instruments, created the trust. (See *St. Luke's, supra*, at p. 770 ['The Book of Discipline [i.e., the general church's governing instrument] did not, by itself, "create" the trust'].) Accordingly, it concluded that the local church could, and did, revoke the trust. [Citation.] We need not decide whether *St. Luke's* was correct on its facts because, assuming its conclusion was factually correct, the decision is distinguishable. Here, the general church's canons, not instruments of the local church, created the trust. The language of section 9142, subdivision (d), requires any revocation of that trust to exist in the document that created it. So, assuming the local church in *St. Luke's* may have been able to revoke the trust of that case, nothing in section 9142 or the governing instruments of the Episcopal Church suggests that defendants may do so in this case." (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 491.)

St. Luke's, supra, 121 Cal.App.4th 754, was also criticized in *Classis of Central California v. Miraloma Community Church*

(2009) 177 Cal.App.4th 750 and *New v. Kroeger* (2008) 167 Cal.App.4th 800 at pages 823 through 824.

Here, the local churches argue *Episcopal Church Cases*, *supra*, 45 Cal.4th 467 is distinguishable because it involved a "hierarchical" church, and PCUSA is not a "hierarchical" church, i.e., "a 'religious congregation which is itself part of a large and general organization of some religious denomination, with which it is more or less intimately connected by religious views and ecclesiastical government.'" (*Id.* at p. 480.) However, even assuming the foregoing principles apply only to hierarchical churches, that label fits PCUSA. The local churches argue PCUSA is not a hierarchical church because its internal legal strategy papers stated that PCUSA "does not refer to itself as a hierarchical church." The local churches view this statement as an *admission* that PCUSA is *not* a hierarchical church. We disagree. The statement is not an admission on its face or in context. In context, the legal strategy memorandum said, "Certainly, [PCUSA] does not refer to itself as a hierarchical church. When speaking to a civil court, however, it is important to use the language the court uses. The courts distinguish between independent or congregational churches on the one hand and hierarchical churches on the other. Firmly present the PCUSA to the court as a hierarchical church." The memorandum goes on to set forth specific indications of a hierarchical organization in the BOO and to cite legal authority

characterizing the Presbyterian Church as hierarchical, including *Presbyterian Church in the United States v. Hull Church* (1969) 393 U.S. 440, [21 L.Ed.2d 658] [PCUS was an association of local Presbyterian churches "governed by a hierarchical structure of tribunals which consists of, in ascending order, (1) the Church Session, composed of the elders of the local church; (2) the Presbytery, composed of several churches in a geographical area; (3) the Synod, generally composed of all Presbyteries within a State; and (4) the General Assembly, the highest governing body"].) (*Episcopal Church Cases, supra*, 45 Cal.4th at p. 441.)

The local churches next argue there is no evidence they "consented" to their property being placed in trust, unlike the *Episcopal Church Cases*, where the local church agreed from its inception to subordinate itself to the national church. However, Fair Oaks did similarly agree in its articles of incorporation to subordinate itself to the national church. The record on appeal does not appear to contain similar evidence with respect to Roseville but, as we have said, the record on appeal is incomplete. Moreover, there is some evidence in the record that local churches were represented in the vote to amend the national church's constitution. Thus, triable issues exist.

The local churches say that, without their express consent, any trust would violate the statute of frauds in Probate Code section 15206, which provides with respect to trusts generally:

"A trust in relation to real property is not valid unless evidenced by one of the following methods:

"(a) By a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so.

"(b) By a written instrument conveying the trust property signed by the settlor, or by the settlor's agent if authorized in writing to do so.

"(c) By operation of law."

The local churches invoke subdivision (b) but fail to address subdivision (c) and fail to show any reason why section 9142 (fn. 1, *ante*) would not provide the "operation of law."

Since we cannot affirm the summary judgments against the national church, the summary judgment against Synod on collateral estoppel grounds also fails.

Accordingly, we conclude the three judgments must be reversed, i.e., (1) the August 27, 2008, judgment against Synod on its complaint in intervention; (2) the September 26, 2008, judgment in favor of the Fair Oaks Church on its complaint against Presbytery; and (3) the September 26, 2008, judgment in favor of the Roseville church on its complaint against Presbytery.

DISPOSITION

The three judgments are reversed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

SIMS, Acting P. J.

We concur:

RAYE, J.

CANTIL-SAKAUYE, J.